

1 Court concludes that the complaint is frivolous, malicious, fails to
2 state a claim upon which relief may be granted, or seeks relief against
3 a defendant who is immune from suit. 28 U.S.C. § 1915A(b); 42 U.S.C.
4 § 1997e(c)(1). In screening such a complaint, the Court must construe
5 the allegations of the complaint liberally and must afford the plaintiff
6 the benefit of any doubt. See Karim-Panahi v. Los Angeles Police Dep't,
7 839 F.2d 621, 623 (9th Cir. 1988). A *pro se* litigant must be given
8 leave to amend his or her complaint unless it is absolutely clear that
9 the deficiencies of the complaint cannot be cured by amendment. *Id.*;
10 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

11 12 **ALLEGATIONS OF THE COMPLAINT** 13

14 Plaintiff is currently detained at the West Valley Detention Center
15 ("WVDC") in Rancho Cucamonga. (Complaint at 1.) His claims in this
16 action arise out of his incarceration at the California Institution for
17 Men ("CIM") in Chino.² (*Id.* at 1.) Defendants in this action are CIM,
18 CIM Warden Aref Fakhoury, and the California Department of Corrections
19 and Rehabilitation ("CDCR").³ (*Id.* at 2.)
20

21 Plaintiff alleges that he arrived at CIM on May 21, 2009, and
22 remained there until May 26, 2009. (Complaint at 3.) Due to lack of
23 bed space, plaintiff had to sleep on the floor, without a mattress, in
24 the hallway of a holding tank. He did not have access to drinking water
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26 ² Plaintiff erroneously refers to CIM as the "Chino Institution
27 for Men."

28 ³ Plaintiff refers to the CDCR as the "California Department of
Corrections," its previous name.

1 and suffered from thirst. On several occasions he was obliged to
2 urinate on the floor near his sleeping quarters, because there was no
3 restroom. It was cold at night, because the nearby door to the loading
4 dock was left open all night. There was a stench from the garbage cans
5 outside, and insects crawled over him. Plaintiff did not receive his
6 prescribed blood pressure medication, causing him to feel dizzy and
7 light-headed. He did not receive a shower during his five-day stay in
8 the holding tank, and he was denied access to hygienic supplies,
9 grievance forms, and envelopes. (*Id.*)

10
11 Plaintiff contends that these conditions violated his Eighth
12 Amendment right to be free from cruel and unusual punishment and his
13 right to due process.⁴ (Complaint at 3.) He seeks damages and an
14 injunction preventing defendants "from continuing to accept inmates
15 while lacking proper bed space" and directing his release from jail in
16 his pending criminal proceedings "if law permits for such a violation."
17 (*Id.* at 7.)

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23 ⁴ Because plaintiff was housed at CIM and has provided the Court
24 with a CDC number, the Court assumes that he was a convicted prisoner
25 when his claims arose. If so, plaintiff's conditions of confinement
26 claims arise under the Eighth Amendment. See Ingraham v. Wright, 430
27 U.S. 651, 671 n.40, 97 S. Ct. 1401, 1412 n.40 (1977). If plaintiff was
28 not a convicted prisoner during his five-day stay at CIM, his conditions
of confinement claims arise under the Due Process Clause. Bell v.
Wolfish, 441 U.S. 520, 535 n.16, 99 S. Ct. 1861, 1872 n.16 (1979); Frost
v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

DISCUSSION

I. PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF IS MOOT.

Plaintiff seeks injunctive relief directing defendants to cease accepting inmates at CIM in the absence of available bed-space. (Complaint at 7.)

Where injunctive relief is involved, questions of mootness are determined in the light of the present circumstances. Mitchell v. Dupnik, 75 F.3d 517, 528 (9th Cir. 1996). A claim for injunctive relief against prison authorities becomes moot when the prisoner is transferred to another prison, and there is no reasonable expectation that he will return and again be subjected to the same conditions. *Id.* at 527-28; Dilley v. Gunn, 64 F.3d 1365, 1368-69 (9th Cir. 1995); Darring v. Kincheloe, 783 F.2d 874, 876 (9th Cir. 1986).

Plaintiff is no longer confined at CIM. (Complaint at 1.) He provides no basis for assuming that he will be transferred back to CIM and subjected to the same conditions. He has no standing to seek the requested relief on behalf of inmates other than himself. Russell v. United States, 308 F.2d 78, 78 (9th cir. 1962) ("A litigant appearing in propria persona has no authority to represent anyone other than himself"). His claim for injunctive relief, therefore, is moot.⁵

⁵ Plaintiff also seeks release from jail in connection with his pending criminal proceedings. This is not relief obtainable through this action. Moreover, there is no connection between plaintiff's claims, which challenge the conditions of confinement at CIM, and his pending criminal proceeding.

1 **II. PLAINTIFF CANNOT STATE A CLAIM AGAINST CIM OR THE CDCR.**

2
3 Plaintiff has named CIM and the CDCR as defendants in this action.
4 (Complaint at 2.)

5
6 The Eleventh Amendment prohibits federal jurisdiction over claims
7 against a state and its agencies unless the state consents to suit.
8 Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100, 104 S.
9 Ct. 900, 908 (1984). The Ninth Circuit has explained: "In the absence
10 of a waiver by the state or a valid congressional override, under the
11 [E]leventh [A]mendment, agencies of the state are immune from private
12 damage actions or suits for injunctive relief brought in federal court."
13 Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999)(*internal*
14 *quotation marks and citation omitted*).

15
16 The State of California has not waived its Eleventh Amendment
17 immunity with respect to claims brought under Section 1983 in federal
18 court, and the Supreme Court has held that Section 1983 was not intended
19 to abrogate a State's Eleventh Amendment immunity. Dittman, 191 F.3d
20 at 1025-26. The CDCR is an agency of the State of California and thus
21 is entitled to Eleventh Amendment immunity. Brown v. California Dept.
22 of Corrections, 554 F.3d 747, 751 (9th Cir. 2009)(CDCR entitled to
23 Eleventh Amendment immunity). CIM also is entitled to Eleventh
24 Amendment immunity because it is part of the CDCR.

25
26 Accordingly, plaintiff's claims against the CIM and the CDCR must
27 be dismissed.

1 **III. PLAINTIFF FAILS TO STATE AN INDIVIDUAL OR OFFICIAL CAPACITY CLAIM**
2 **AGAINST WARDEN FAKHOURY.**

3
4 Plaintiff has sued Warden Fakhoury in his individual and official
5 capacities. (Complaint at 2.)

6
7 **A. Individual Capacity**

8
9 An Eighth Amendment claim challenging conditions of confinement
10 must satisfy both objective and subjective criteria. Wilson v. Seiter,
11 501 U.S. 294, 298, 111 S. Ct. 2321, 2324 (1991). First, the deprivation
12 must be sufficiently serious to implicate the Constitution. *Id.* The
13 conditions of a prisoner's confinement amount to cruel and unusual
14 punishment only if he has been deprived of the "minimal civilized
15 measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347,
16 101 S. Ct. 2392, 2399 (1981). Second, prison officials are liable for
17 the deprivation only if they acted with deliberate indifference to a
18 substantial risk of serious harm. Farmer v. Brennan, 511 U.S. 825, 828,
19 114 S. Ct. 1970, 1974 (1994).

20
21 Assuming, *arguendo*, that plaintiff's allegations are sufficient to
22 satisfy the objective prong for an Eighth Amendment violation at this
23 preliminary stage,⁶ he nevertheless has not alleged deliberate
24 indifference on the part of Warden Fakhoury. Plaintiff does not allege
25 that Warden Fakhoury was aware of the conditions under which plaintiff

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27 ⁶ The Court notes, however, that plaintiff cannot allege an
28 Eighth Amendment claim based on the failure to provide him with
envelopes or grievance forms.

1 was housed, or that Warden Fakhoury had any involvement in plaintiff's
2 medical care. See Townsend v. Fuchs, 522 F.3d 765, 775 (7th Cir. 2008)
3 (affirming the denial of leave to add a warden as a defendant when the
4 complaint lacked the necessary indication that the warden caused or knew
5 about the living conditions of an inmate who slept on a moldy mattress
6 on the floor during temporary overcrowding in administrative
7 segregation). Nor does plaintiff allege that the alleged deprivations
8 were the result of policies instituted by Warden Fakhoury. On the
9 contrary, plaintiff suggests that he was housed in the hallway of the
10 holding tank because CIM did not have enough bed-space for all inmates.
11 (See Complaint at 3.) This allegation, without more, is insufficient
12 to impose liability for damages on Warden Fakhoury. See Latimer v.
13 Kolender, 2008 WL 2326305, *5 (S.D. Cal., June 3, 2008)(dismissing claim
14 against sheriff and county when plaintiff alleged that they maintained
15 overcrowded conditions in jail, which caused him to be deprived of
16 adequate medical care; "[g]eneralized conclusory allegations of
17 overcrowding and budget constraints are insufficient to state a claim").

18
19 "Liability under Section 1983 arises only upon a showing of
20 personal participation by the defendant. A supervisor is only liable
21 for constitutional violations of his subordinates if the supervisor
22 participated in or directed the violations, or knew of the violations
23 and failed to act to prevent them. There is no *respondeat superior*
24 liability under Section 1983." Taylor v. List, 880 F.2d 1040, 1045 (9th
25 Cir. 1989)(*internal citations omitted*). Here, plaintiff's allegations
26 amount to nothing more than an impermissible attempt to hold Warden
27 Fakhoury liable under a *respondeat superior* theory.

1 Accordingly, plaintiff's individual capacity claim against Warden
2 Fakhoury must be dismissed.

3
4 **B. Official Capacity**

5
6 As discussed above, plaintiff's individual capacity claim against
7 Warden Fakhoury is substantively deficient. In addition, plaintiff
8 cannot state a claim against Warden Fakhoury in his official capacity.
9 Official capacity claims against state officials are merely another way
10 of pleading a claim against the state itself. See Will v. Michigan
11 Dep't of State Police, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312 (1989)
12 ("[A] suit against a state official in his or her official capacity is
13 not a suit against the official but rather is a suit against the
14 official's office. As such, it is no different from a suit against the
15 State itself.")(internal citation omitted). Thus, "[t]he Eleventh
16 Amendment bars actions for damages against state officials who are sued
17 in their official capacities in federal court." Dittman, 191 F.3d at
18 1026 ().

19
20 The Eleventh Amendment does not bar official capacity claims
21 against state officials for prospective injunctive relief to end a
22 continuing violation of federal law. Ex parte Young, 209 U.S. 123, 28
23 S. Ct. 441 (1908); Doe v. Lawrence Livermore Nat'l Lab., 131 F.3d 836,
24 839 (9th Cir. 1997). Plaintiff's injunctive relief claim against Warden
25 Fakhoury, however, has been mooted by plaintiff's transfer. Plaintiff
26 is no longer at CIM, and he does not have standing to seek injunctive
27 relief on behalf of inmates who are or may be incarcerated at CIM.
28

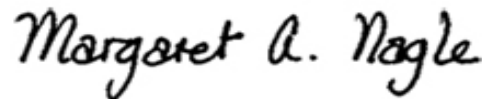
1 Accordingly, even if plaintiff is able to allege an individual
2 capacity claim against Warden Fakhoury in his amended complaint,
3 plaintiff cannot allege an official capacity claim. Thus, plaintiff's
4 official capacity claim against the Warden must be dismissed.

5
6 **CONCLUSION**

7
8 For the foregoing reasons, the Complaint is dismissed with leave
9 to amend. If plaintiff wishes to pursue this action, he is granted
10 thirty (30) days from the date of this Memorandum and Order within which
11 to file a First Amended Complaint that attempts to cure the defects in
12 the First Amended Complaint described herein. The First Amended
13 Complaint, if any, shall be complete in itself. It shall not refer in
14 any manner to the original Complaint.

15
16 **Plaintiff is explicitly cautioned that failure to timely file a**
17 **First Amended Complaint, or failure to correct the deficiencies**
18 **described herein, may result in a recommendation that this action be**
19 **dismissed pursuant to Fed. R. Civ. P. 41(b).**

20 DATED: January 19, 2010

21 

22 MARGARET A. NAGLE
23 UNITED STATES MAGISTRATE JUDGE
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